

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2020

Pronounced on : 23.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.38508 & 38509 of 2015
and M.P.Nos.1 & 1 of 2015

M/s. P.I.Polymers,
Rep.by Proprietrix,
#1330 Mugappair Road,
Anna Nagar West Extn.
Chennai 600 050 ... Petitioner in both W.Ps.

vs.

The Commercial Tax Officer,
Pattarawalkam Assessment Circle,
No.5,South High Court Colony,
Villivakkam, Chennai 600 049. ... Respondent in both W.Ps.

Prayer in both W.Ps.: Writ Petitions filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned order of re-assessment in TIN:33091321764/2012-13 and TIN:33091321764/2013-14 dated 13.11.2015 passed by the respondent and quash the same.

For Petitioner : M/s.Aparna Nandakumar
in both W.Ps.

For Respondent : M/s.G.Dhananadhri
Government Advocate (Tax)
(In both W.Ps.)

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C O M M O N O R D E R

By this common order both the writ petitions are being disposed. In these writ petitions, the petitioner has impugned orders dated 13.11.2015 vide TIN No. 33091321764 for the assessment years 2012-13 and 2013-14.

2. By the impugned orders, the petitioner has been directed to reverse the proportionate Input Tax Credit availed by the petitioner during these assessment years on the tax borne by the petitioner while purchasing Duty Entitlement Passbook (DEPB).

3. The petitioner had availed Input Tax Credit under section 19 of the Tamil Nadu VAT Act, 2006 on the tax borne on the purchase of the DEPB. The petitioner utilised the aforesaid Input Tax Credit for discharging tax on sale of plastic granules imported by the petitioner. It is submitted that the petitioner also partly utilises the imported plastic granules for manufacture of plastic products such as plastic bottles et cetera.

4. After the petitioner filed monthly returns for the respective assessment year and self-assessment were completed under Section 22 (2) of the Tamil Nadu VAT Act, 2006, the petitioner was issued with preassessment notices dated 15.6.2015.

5. In the notices issued to the petitioner it was observed that as per the clarification issued by the Commissioner of Commercial Taxes in Ref.No.VAT Cell/31956/2007 (VCC No. 940) dated 25.7.2007 no Input Tax Credit is eligible on purchase of DEPB under section 19 (2) (i) of the TN VAT Act, 2006 as if they are utilising the same for the purpose sale of DEPB and as per section 19 (2) of the said Act, no input tax credit is eligible on purchase of DEPB license, as if they are utilised for any other purpose. Hence it was proposed to reverse the credit availed on VAT paid on DEPB by the petitioner. It was also proposed to impose a penalty under Section 42(3) of the Act.

6. The petitioner replied to the respective notices by its reply dated 03.08.2015 for the Assessment Year 2012-2013 and reply dated 04.08.2015 for the Assessment Year 2013-2014. Pursuant to a personal hearing on 30.10.2015, the impugned orders came to be passed by the respondent. While passing the impugned order, the respondent has considered the decision of a Division Bench of this Court in Prakash Impex versus State of Tamil Nadu in TCR Nos. 158-162 of 2011.

7. In the impugned order, it has been concluded that under Section 19 (2) of the Tamil Nadu VAT Act, 2006 the petitioner should have re-sold DEPB to be eligible to avail and utilise the input tax credit availed by the petitioner.

8. The learned counsel for the petitioner submits that the issues covered by the decision of the Delhi High Court in Jagriti Plastics Ltd versus Commissioner of Trade and Taxes 2016 IAD Delhi 625 and 2016 54 GST 632 (Delhi) and submits that the decision of this Court in Prakash Impex versus State of Tamil Nadu is to be confined to the facts peculiar of the said case.

9. The learned counsel also referred to few other decisions rendered in the context of CENVAT Credit Rules, 2002 to state that there is no one-to-one co-relationship between the Input Tax Credit availed on input and the tax payable on output service/goods. A specific reference was made to the decision of the Division Bench of the Bombay High Court in

Excise 2009 (15) STR 657.

10. Learned counsel also sought to distinguish the decision of the Division Bench of this Court rendered in Sha Kantilal Jayanthilal versus State of Tamil Nadu 2016 (339) ELT 520.

11. Learned counsel submits that noting that the decision rendered in Sha Kantilal Jayanthilal Versus State of Tamil Nadu 2016 (339) ELT 520 was per incurriam. She submits that a single judge of this Court in Mahaveer Trading Company Versus Asst.Commissioner (CT) vide order dated 13.11.2017 in W.P.Nos. 28271 to 28275 of 2017 remanded the case back in the light of the decision of the Division Bench of the Delhi High Court in Jagriti Plastics Ltd versus Commissioner of Trade and Taxes referred to supra.

12. Learned counsel for the petitioner has also produced an order dated 16.12.2019 passed in the case of Mahaveer Trading Company versus Asst.Commissioner (CT) pursuant to remand order dated 13.11.2017 in W.P.Nos.28271 to 28275 of 2017 wherein the Asst.Commissioner (ST) has dropped the proceeding.

13. Learned counsel submits that as per the decision the Hon'ble Supreme Court in A.R. Antulay versus RS Nayak (1998) 2 SCC 602 decisions which are per incurriam deserves to be ignored. She submits that per incurriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is formed on that account to be demonstrably wrong.

14. Learned counsel also refers to the decision of the Hon'ble Supreme Court rendered in and Bhargavan Pillai versus State of Kerala 2004 SC 2317 when it was held that views expressed without analysing the statutory provisions cannot be treated as a binding precedent and has to be treated as having been rendered per incurriam. Learned counsel also relies on the decision of the Division Bench of this Court rendered in Philips Jayasingh Versus the Joint Registrar of Cooperative Societies and Others 1992 to MLJ 309.

15. Per contra, learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference. It is further submitted that the petitioner has an alternate remedy by way of an appeal before the Additional Deputy Commissioner and therefore the writ petitions were liable to be dismissed.

16. It was further submitted that in the teeth of the decision of the Division Bench of this Court in Sha Kantilal Jayanthilal versus State of Tamil Nadu 2016 (339) ELT 520 also these writ petitions are liable to be dismissed.

17. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional

Government Pleader (Tax).

18. At the outset, it may be mentioned that an Assessing Officer cannot rely on clarifications and instructions of his superior as has been done in the present case.

19. If assessing officers were follow such clarifications of their superior, their orders would be arbitrary. As such, such assessment cannot be completed based on clarifications as such exercise would amount to assessment by circular contrary to the view taken by the Honourable Supreme Court in Orient Paper Mills Case vs, UOI AIR 1969 SC 48. The Court there held as follows:-

'' 8. If the power exercised by the Collector was a quasi judicial power - as we hold it to be - that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the Appellate Authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the Appellate Authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires Section 35 of the Act. ''

20. That apart the powers which were vested with the Commissioner of Commercial Taxes under the provisions of the TNGST Act, 1959 to issue such clarification were no longer available under the provisions of the Tamil Nadu VAT Act,

2006. Such powers could be exercised only under Section 48 A by an Advance Ruling Authority on an application. Therefore, the clarification dated 25.7.2007 of the Commissioner of Commercial Tax has no binding force of law under the changed scenario.

21. As an assessing officer, the respondent ought to independently come to a conclusion whether the provisions of the Tamil Nadu VAT Act, 2006 were to be invoked in the facts and circumstances of the case or not. Therefore, initiation of proceedings vide notices dated 15.6.2015 prima facie appears to be ill conceived and proceeds on a wrong assumption of jurisdiction by the respondent.

22. Since the impugned order has been passed, the issue appears to be covered by the decision of the Division Bench of this Court in Sha Kantilal Jayanthilal versus State of Tamil Nadu 2016 (339) ELT 520 I am constrained to examine the issue on merits and give a finding as to its applicability to the facts of the present case.

23. As far as DEPB scrips are concerned, it is beyond any shadow of doubt it is "goods" with the meaning of Section 2(21) of the Tamil Nadu VAT Act, 2006 and was therefore liable to tax under the provisions of the Tamil Nadu VAT Act, 2006. In this connection, it would suffice to refer to the decision of the Hon'ble Supreme Court in Yasha Overseas, Commissioner of Sale Tax (2008) 7 VST 182 (SC) wherein the Hon'ble Supreme Court held that DEPB has an intrinsic value that makes it a marketable commodity.

24. Therefore, DEPB qualifies as 'goods' within the meaning of the Sales Tax laws and its sale is exigible to tax. DEPB scrips/licence is liable to tax at the rate prescribed under Entry 70 of Part B of the 1st Schedule of the Tamil Nadu VAT Act, 2006.

25. Since DEPB scrips/license is liable to tax at the rate prescribed under Entry 70 of Part B of the 1st Schedule of the Tamil Nadu VAT Act, 2006, the petitioner was entitled to input tax credit in terms of Section 19(1) of the Tamil Nadu VAT Act, 2006. Reference may be made to the aforesaid provision which reads as under during the period in dispute :-

Section 19(1): Input Tax Credit.-

There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :

[Provided that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed by the registered dealer who sold such goods and

that the goods have actually been delivered;

Provided further that the tax deferred under Section 32 shall be deemed to have been paid under this Act for the purpose of this sub-section.)

26. As per as Section 19 (2) of the Tamil Nadu VAT Act, 2006, input tax credit shall be allowed for the purchase of the goods made within the state from a registered dealer and which are for the purpose of :-

- (i) re-sale by him within the State; or
- (ii) use as input in manufacturing or processing of goods in the State; or
- (iii) use as containers, labels and other materials for packing of goods in the State; or
- (iv) use as capital goods in the manufacture of taxable goods.
- (v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);]
- (vi) Agency transactions by the principal within the State in the manner as may be prescribed.

27. The expression re-sale in clause (i) to Sub Section 2 to Section 19 facilitates a registered dealer to use input tax for re-sale of goods. There is no restriction that input tax credit availed has to be used for sale/re-sale of the same product on purchase of which credit was availed. It merely facilitates are registered dealer to utilize such input tax credit in case of re-sale of one or more of the goods. There is no restriction or one to one co-relationship between the credit availed and its utilization.

28. Further, as per the definition of "input" in Section 2(23) of the Tamil Nadu VAT Act, 2006, "input" means any goods including capital goods purchased by a dealer in the course of his business. The expression "input tax" has been defined in Section 2 (24). It means the tax paid under this Act (TNVAT, Act 2006) by a registered dealer to another registered dealer on the purchase of "goods" including capital goods in the course of his business. Again the definition is inclusive definition.

29. Conjoint reading of the expression "any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern" in the definition of "business" in sub clause (ii) to Section 2 (10) with definition of "goods", "input" and "input tax" and Section 19 makes it clear that the intention is not to

restrict or stifle the use of input tax credit. Once credit has been validly availed, it can be utilized unless there is specific restriction. The Hon'ble Supreme Court in *Dai Ichi Karkaria Vs CCE 1999 (112) ELT 353*, has held that once credit has been validly availed, it is indefeasible in the hands of an assessee and can be utilized without any limit unless the statutory Rules itself provides for such restrictions.

30. As per Section 3(3) of the Tamil Nadu VAT Act, 2006 tax payable under sub-section(2) by registered dealer, shall be reduced to the extent of tax paid on his purchase of goods specified in Part-B or Part-C of the 1st schedule, inside the State, to the registered dealer, who sold the goods to him. The petitioner was thus entitled to avail Input Tax Credit on the tax paid by the dealer who sold such DEPB Scrips/Licence to the petitioner.

31. There is nothing in the provision which makes the availability and utilization of such credit for the same class of goods. There is also no one to one co-relation under the scheme of the Act. Therefore, input tax credit can be accumulated on the purchase of several goods by a dealer and utilized under Section 3(3) of the Tamil Nadu VAT Act, 2006. Rule 10 of the Tamil Nadu Value Added Tax Rules, 2007 does not contemplate maintenance of separate accounts for different inputs. As long as credit has been validly availed, its utilization cannot be denied.

32. The expression " business " has been defined in Section 2(10) of the Tamil Nadu VAT Act, 2006. This definition is also expansive includes any trade or commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not, such trade, commerce, manufacture, adventure or concern is carried on with the motive to make again or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern and any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

33. It must be borne in mind that the provisions of the Tamil Nadu VAT Act, 2006 were designed to reduce the cascading effect on the output tax by allowing adjustment of input tax credit on the tax paid on the inputs and therefore input tax paid on inputs which go on to enrich final product whether to be sold as such or after value addition on account of manufacturing/processing or by way re-sale are to be set off in terms of Section 3 (3) of the Tamil Nadu VAT Act, 2006. This is the avowed objective behind enacting Section 19 of the Tamil Nadu VAT Act, 2006.

34. However, the decision of the Division Bench of this Court in *Sha Kantilal Jayanthilal vs. State of Tamil Nadu 2016(339) ELT 520* seems to indicate that input tax credit cannot be availed on VAT paid on the purchase of DEPB Scrips from the open market cannot be utilized for discharging VAT

liability on the final product.

35. There an identical issue arose. The notice was issued for reversal of ITC claim for the purpose of DEPB to the extent they were used for their own purposes. The Assessing Officer thus confirmed the demand.

36. Later, the assessee there filed a statutory appeal under Section 51 of the Tamil Nadu VAT Act, 2006. The Appellate Deputy Commissioner rejected the appeal of the assessee holding that under Section 19(2), input tax credit can be allowed only for resale within the State, manufacturing or processing in the State or in the course of interstate trade or commerce and since the petitioner had purchased the DEPB licence from local registered dealers and use it for their imported goods to reduce the customs duty, appellate Deputy Commissioner held that the credit availed was liable to be reversed, The appellate Tribunal also dismissed the appeal of the assessee.

37. The Hon'ble Division Bench of this Court in M/S.Sha Kantilal Jayantilal vs The State Of Tamilnadu Rep.by Joint Commissioner (CT), Chennai (North), Division, Chennai, framed the following question of law:

(i) Can the Department deny the benefit of input tax credit for the duty paid by the petitioner on the purchase of DEPB licences, when such licences are considered to be "goods" within the meaning of Section 2 (21) and the tax paid on the purchase of such licences are considered as "input tax" under Section 2(24) and also when the charging provisions in Section 3(3) clearly entitle a registered dealer to such a benefit ?

(ii) Is the list mentioned in Clauses (i) to (vi) of Sub-Section (2) of Section 19 enumerative or exhaustive ?

38. The Hon'ble Division Bench has observed as follows:

30. But, a look at Section 19(1), which provides for input tax credit shows that the entitlement for such credit is restricted only to the amount of tax paid or payable under the Act by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule. Therefore, unless the claim for input tax credit relates to the tax paid or payable on the purchase of taxable goods specified in the First Schedule, it is not possible to grant credit.

31. In so far as the First Schedule is concerned, the same is divided into three parts namely Part A, Part B and Part C. While Part A gives a list of goods, which are

taxable at the rate of 1%, Part B gives a list of goods, which are taxable at the rate of 5%. Part C gives a list of items, which are taxable at higher rates. We are not concerned in this case with the rates.

32. But, it can be seen from the First Schedule that DEPB licences are not included in any of the parts namely Part A, Part B and Part C. Therefore, the goods in relation to which, the petitioner claims input tax credit namely DEPB licences, despite coming within the purview of the expression 'goods' under Section 2(21), do not constitute goods specified in the First Schedule. Hence, Section 19(1) has no application.

33. DEPB licences do not even fall under any of the categories mentioned in Section 19(2). The case of the petitioner does not even fall under Sub-Section (3) or Sub-Section (4) of Section 19. Therefore, our answer to the first question of law would be that the Department was right in denying the benefit of input tax credit in respect of the duty paid by the petitioner on the purchase of DEPB licences, despite the fact that these licences constitute goods within the meaning of Section 2(21).

34. Despite the fact that DEPB licences are goods, they are certainly different and distinct from the goods that can be imported on the strength of those licences. These licences confer a right upon the licensees to import goods at some concession. It is only the goods that are imported on the strength of these DEPB licences, that may fall within the ambit of Section 19(1) provided a tax is payable or paid under the Tamil Nadu Value Added Tax Act, 2006 on those goods and those goods are also listed in the First Schedule to the Act.

35. Apart from the fact that DEPB licences purchased by the petitioner are not goods enumerated in the First Schedule, it is to be pointed out that the petitioner does not pay any tax under this Act namely the Value Added Tax Act on these purchases. What the petitioner is now seeking is a credit for the duty paid.

36. In addition, the petitioner has used these DEPB licences, for the purpose of payment of

import duty. Therefore, the benefit that they are claiming now under the Tamil Nadu Value Added Tax Act appears to be a double benefit. As we have pointed out earlier, the petitioner cannot claim credit, unless he satisfies all the three conditions specified in Section 19 (1) namely (i) that he is a registered dealer (ii) that he actually paid or became liable to pay tax on the purchase of taxable goods and (iii) that the tax paid or payable was in respect of goods specified in the First Schedule. The petitioner does not satisfy all the three conditions. Hence, the denial of input tax credit on the purchase of DEPB licences is perfectly in order and the first question of law is answered against the petitioner.

QUESTION (ii):

37. The second question of law as to whether the purposes indicated in Clauses (i) to (vi) of Sub-Section (2) of Section 19 are enumerative or exhaustive. As we have pointed out earlier, Section 19(2) directs input tax credit to be allowed for the purchase of goods made within the State from a registered dealer, if they are for the purposes indicated in Clauses (i) to (vi) therein. The purposes indicated in these clauses are (i) re-sale within the State (ii) use as input in manufacturing or processing of goods in the State (iii) use as containers, labels and other materials for packing of goods in the State (iv) use as capital goods in the manufacture of taxable goods (v) sale in the course of Inter-State trade or commerce falling under Section 8(1) of the Central Sales Tax Act, 1956 and (vi) agency transactions by the principal within the State.

38. We have already summarised the scheme of Section 19 in paragraph 14 above and indicated that Section 19 is a complete Code in itself. There are 20 sub-sections under Section 19, each of which serves a different purpose. While Sub-Section (2) gives a list of purposes for the purchase of goods within the State, which would make a registered dealer entitled to input tax credit, Sub-Section (3) speaks about a similar entitlement in so far as the purchases of capital goods are concerned. Sub-Sections (5) and (6) indicate the circumstances, under which, the input tax

credit cannot be allowed.

39. But, the entitlement of a registered dealer to input tax credit, does not arise solely out of Sub-Section (2) of Section 19. It arises actually out of Sub-Section (1) of Section 19. But, since Sub-Section (1) covers all types of purchases of all types of goods specified in the First Schedule by all types of registered dealers, it is generic in nature. Out of such generic entitlement stipulated in Sub-Section (1), the statute carves out-

(i) certain purchases made for the purposes specified in Sub-Section (2) within the State

(ii) certain purchases of capital goods under Sub-Section (3)

(iii) certain purchases, made for purposes indicated in Sub-Section (4), etc.

40. Therefore, entitlement, non-entitlement, etc., are covered with reference to specifics in the other Sub-Sections of Section 19. It does not mean that the very entitlement to credit could be traced only to Sub-Sections (2) to (4) and the non-entitlement could be traced to Sub-Sections (5) to (10). If a dealer satisfies the essential conditions stipulated in Sub-Section (1), he is entitled to credit. Therefore, we are of the considered view that Sub-Section (2) of Section 19 is enumerative and not exhaustive. The second question of law is answered accordingly."

39. The Hon'ble Division Bench has proceeded on the assumption that DEPB Scrips/Licence are not goods liable to tax under the 1st schedule. There is however no discussion as to how such a conclusion has been arrived. Entry 70 of Part B, 1st Schedule of the Act pertains to "Intangible Goods like copyright, patents, REP licence.

40. REP licences were issued under the provisions of the Export Import Policy as it stood during the late 1980s, 90s and early part of this millennium. They were discontinued by the Ministry of Commerce, UOI Department of Foreign Trade Development and different kinds of scrips/licence came to be issued under the successive Export Import Policy and Foreign Trade Policies issued under The Foreign Trade (Development and Regulation) Act, 1992. DEPB is one such licence which was introduced in 1997.

41. Reference may be made to Public Notice No. 68 dated 7th March 2003 wherein it was clarified that the EXIM Policy 1997-2002 provided replenishment (REP) licence for import of gold/ silver/ Platinum in respect of exports made

during that policy period. In the EXIM Policy, 2002-2007 effective from 1.4.2002, this provision was discontinued and instead a provision for procuring these items from the nominated agencies was introduced. A transitional arrangement was also made for obtaining such supplies from the nominated agencies even in respect of export made on or before 31.3.2002. Suffice to state that when VAT was introduced when REP licence was no longer being used.

42. Entry No.7 of Part B of 1st schedule is an inclusive entry as is evident from the use of the expression "like" and sale or purchase DEPB was liable to tax at the rate specified Entry 70 of Part B, 1st Schedule only.

43. Since the Hon'ble Division Bench has not discussed the above aspect in its judgment but has come to a conclusion that DEPB Scrips/licence are not goods enumerated in the 1st Schedule of the Tamil Nadu VAT Act, 2006, the view expressed in the above judgment that DEPB was not liable to tax under 1st Schedule of the Tamil Nadu VAT Act, 2006 may require a re-look by a Full Bench of this Court on reference.

44. Similarly, the observation in paragraph 36 of the Division Bench that the assessee was claiming the benefit under 19(2) after utilizing DEPB for the purpose of payment of import duty also appears to be a double benefit to the assessee requires a re-look.

45. It must be remembered that DEPB Scrips were given by the Joint Director of General of Foreign Trade as an export incentive to an exporter under the Export Import Policy. Instead of giving cash refund on exports, the Central Government through the Ministry of Commerce & Trade gave it in the form of credit of duty in the DEPB Scrips/licence which could be used for discharging the Customs duty at the time of import of goods. Such DEPB Scrips/licence could be either used by the exporter himself in whose name such scrips/licence were issued as an export incentive or it can be sold in the open market to be purchased by person like the petitioner like REP Licence.

46. Nevertheless, at the time of import, there is a payment of duty though such payment is not in cash but by debiting the credit of duty in the DEPB scrips/license. Therefore, the observations in paragraph No.32 to 36 may not be correct.

47. I would refrain from holding the decision as per incuriam though it was submitted by the learned counsel for the appellant. The said decision gives an interpretation of the provision of the law and is binding on this court even if it fails to note the avowed object of the Tamil Nadu VAT Act, 2006 was to allow cross utilization of input tax credit to dealers to reduce the cascading effect of the tax on the final product as long as credit is available.

48. As far as applicability of the decision of the Division Bench of the Delhi High Court in Jagriti Plastics Ltd versus Commissioner of Trade and Taxes 2016 IAD Delhi 625 and 2016 54 GST 632 (Delhi), is concerned, I am of the view that though the Court there has held input tax credit was available on the VAT paid on purchase of DEPB, the Court there has not decided the entry under which it was taxable.

49. In the present case, the Honourable Division Bench has given finding regarding the rate of tax and inapplicability of the 1st schedule for the purchase of DEPB. I am therefore not able to apply it to the present case. In any event, I am bound by the decision of the Division Bench of this Court in Sha Kantilal Jayanthilal versus State of Tamil Nadu 2016 (339) ELT 520.

50. Therefore, I am constrained to dismiss the writ petitions with the above observation. Accordingly both the writ petitions are hereby dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kkd

To

The Commercial Tax Officer,
Pattarawalkam Assessment Circle,
No.5, South High Court Colony,
Villivakkam, Chennai 600 049.

+2cc to Mr.Aparna Nandakumar, Advocate, S.R.No. 5509
+1cc to the Special Government Pleader(T) S.R.No. 5414

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W.P.Nos.38508 & 38509 of 2015
and M.P.Nos.1 & 1 of 2015

NRL (CO)
GN (09/03/2020)